IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 12749 of 2004

Between:

1. M.V. Sanyasi Naidu, S/o. Raja Rao,
Aged about 35 years, Occupation: Clerk, Thummapala

Primary Agricultural Cooperative Society Ltd., No. M 935,

Anakapalle, Visakhapatnam District.
2 B.H.V. Rajya Lakshmi, D/o.Venkata Narasimha Murthy,

Aged about 31 years, Occupation: Clerk, Thummapala

Primary Agricultural Cooperative Society Ltd., No. M 935,

Anakapalle, Visakhapatnam District.
3 S.A. Ganeswara Rao, S/o.Appa Rao,
Aged about 41 years, Occupation: Attender, Thummapala

Primary Agricultural Cooperative Society Ltd., No. M 935,

Anakapalle, Visakhapatnam District.

..... PETITIONERS

AND

1. The Government of A.P., Represented by its Secretary, Cooperative Department, Secretariat, Hyderabad.

2. The District Cooperative Officer, Visakhapatnam, Visakhapatnam District.

3. The Divisional Cooperative Officer, Visakhapatnam Visakhapatnam District.

4. The Person Incharge, Tummapala Primary Agricultural Cooperative Society Ltd., No.M.935, Anakapalle, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein, the High Court will be pleased to issue a writ, or order or direction more particularly one in the nature of writ of mandamus declaring the impugned proceedings issued by the 4th respondent dated 16-7-2004 at the instance of respondents 1 to 3 as illegal, arbitrary and violative of principles of natural justice apart from contrary to Articles 14, 19 (1) (g) and 21 of the Constitution of India beside contravention of the provisions of the A.P. Cooperative Societies Act and Rules made thereunder.

Counsel for the Petitioners: MR.V.AJAY KUMAR

Counsel for Respondent Nos 1 to 3: GP FOR COOPERATION

Counsel for Respondent No.4: --

The Court made the following order:

It is the case of the petitioners that petitioners 1 and 2 are clerks and the third petitioner is an attender working in Thummapala Primary Agricultural Cooperative Society Limited, Anakapalle, Visakhapatnam district. They were appointed as clerks and attender on compassionate grounds on 1-4-1997, 30-11-1999 and 29-6-1995 respectively and that the 3rd respondent-Divisional Cooperative Officer, Visakhapatnam vide his proceedings in Rc.No.279/97-B, dated 6-3-1997 accorded permission for appointment of petitioner No.1 on compassionate grounds in the existing vacancies of the society keeping in view, the guidelines issued in special bye-laws relating to service conditions issued in Cir.Rc.No.34483/85-C2(B) dated 30-9-1995 of the CC & RCS, A.P. Hyderabad and that similar approval orders were issued for appointment of second and third petitioners also. While so, the 4th respondent-society passed the impugned order, appears to have been signed on 16-7-2004 stating that the appointments of the petitioners in the society are not approved as per the staffing pattern by the Registrar of Cooperative Societies as required under Section 116 (c) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') and therefore, the said appointments are in violation of the provisions of Section 116(c) of the Act.

Learned counsel for the petitioners submitted that when the competent authority i.e., the 3rd respondent-Divisional Co-operative Officer, Visakhapatnam approved the appointments of the petitioners on compassionate grounds in the existing vacancies, it cannot be said that there is no approval of the staffing pattern, qualifications, pay scales and other allowances of the employees of the 4th respondent-society by the Registrar of Cooperative Societies.

I have perused the record. No where, it has been stated that the 4th respondent-society has fixed the staffing pattern, qualifications, pay scales and other allowances of its employees with the prior approval of the Registrar of Cooperative Societies subject to the condition that the expenditure towards pay and allowances of the employees is not exceeding two percent of the working capital or thirty percent of the Gross profit, in terms of actuals in a year whichever is less. Therefore, it cannot be said that the appointments of the petitioners were made in conformity with the provisions of Section 116 (c)(1) of the Act. Unless the 4th respondent-society fixes the staffing pattern, qualifications, pay scales and other allowances of its employees and gets the approval of the Registrar of Cooperative Societies, it cannot be said that the petitioners are regular employees since they are working contrary to the provisions of Section 116 (c) (1) of the Act and therefore, I am of the view that their services are only temporary. If the termination of the petitioners is contrary to the Industrial Disputes Act, 1947, it is open for the petitioners to approach the appropriate forum and seek appropriate relief.

However, I have taken a view in the judgment in W.P.No.3171 of 2003 and batch dated 30-8-2004 that the Primary Agricultural Cooperative Society Limited is not a “State” within the meaning of Article 12 of the Constitution of India and the societies are not amenable to writ jurisdiction under Article 226 of the Constitution of India. Therefore, no writ lies against the society.

In view the above, the writ petition is dismissed. However, it is made clear that if the society is running on viable conditions and fulfilling the stipulations as contemplated under Section 116 (c)(1) of the Act, it is open for the 4th respondent-society to forthwith fix the staffing pattern, qualifications, pay scales and other allowances and send the proposals to get the approval of the Registrar of Cooperative Societies so as to continue the required staff for its functioning. No costs.

30-8-2004

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1. The Secretary, Cooperative Department, Government of A.P,. Secretariat, Hyderabad.

2. The District Cooperative Officer, Visakhapatnam, Visakhapatnam District.

3. The Divisional Cooperative Officer, Visakhapatnam Visakhapatnam District.

4. The Person Incharge, Tummapala Primary Agricultural Cooperative Society Ltd., No.M.935, Anakapalle, Visakhapatnam District.

5. Two CCs to G.P. for Cooperation, High Court of A.P., Hyderabad.(out)

6. Two CD copies.